FIRST MISSISSIPPI CORP.

IBLA 81-949 Decided March 9, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting over-the-counter oil and gas lease offers M 45686, etc.

Set aside and remanded.

1. Notice: Generally -- Oil and Gas Leases: Stipulations -- Rules of Practice: Generally

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

APPEARANCES: Alan Hornbeak, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

First Mississippi Corporation appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated July 23, 1981, rejecting noncompetitive oil and gas lease offers M 45686, M 45687, M 45690, M 45691, M 45692, and M 45693. The reason for the rejection was appellant's failure to execute required stipulations for the protection of cultural, paleontological, and other land use values within 30 days from receipt of notice of that requirement.

The offers were filed on January 16, 1980, subject to the terms of the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 181

(1976). 1/ By notice of June 3, 1981, BLM advised appellant that it must sign and return the stipulations within 30 days from receipt of the notice. A copy of the returned receipt card shows that the notice was delivered on June 8, 1981.

In its statement of reasons, appellant explains that First Energy Corporation, a wholly-owned subsidiary of First Mississippi Corporation, is responsible for the administration, exploration, and development of all oil and gas interests held by appellant, and that all mail regarding leases that is received by First Mississippi is immediately transmitted to First Energy for proper action. Appellant contends that the BLM decision of July 23, 1981, constitutes the first actual notice to both appellant and First Energy Corporation that the stipulations for the lease applications had been required by BLM. Appellant explains as follows:

> The envelope containing the subject Stipulations was presumably delivered by the Post Office to one Tommie Robinson, an employee of Jackson Speedy Delivery (as evidenced by the signature on the attached photostatic copy of the certified mail return receipt card). Jackson Speedy Delivery is an independent service company which, at the time in question, had contracted to deliver First Mississippi's mail to and from the Post Office. Despite diligent and exhaustive investigation, we have been unable to find any trace of the envelope from the moment that the above-referenced certified receipt card was signed by the employee of Jackson Speedy Delivery. It is, however, absolutely clear that neither the envelope nor the Stipulations contained therein were received in the offices of First Mississippi Corporation.
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> The failure to sign and return these instruments is attributable, not to a lack of willingness or diligence by the lessee, but is due rather to an unavoidable mischance in the initial delivery of the Notice and Stipulations to First Mississippi Corporation.

[1] The Secretary of the Interior may require offerors for noncompetitive oil and gas leases to accept stipulations reasonably designed to protect cultural, paleontological, and other land use values prior to issuing the leases. See 43 CFR 3109.2-1; Duncan Miller, 32 IBLA 322 (1977); Milan S. Papulak, 31 IBLA 69 (1977). Appellant's failure to sign and return the stipulations within the allotted time properly resulted in the rejection of the lease offers. Arthur Ancowitz, 53 IBLA 69 (1981); J. Thomas Lewis, 50 IBLA 350 (1980).

1/ Emerald Oil Company filed the offers. Subsequently, Emerald was dissolved, and appellant acquired all its assets, including the offers in question. By letter dated Nov. 26, 1980, BLM recognized the transfer of ownership to appellant.

In this case, appellant asserts, as justification for its failure to return the stipulations, lack of receipt of those stipulations. Clearly, under the regulations, appellant did receive the stipulations, since an employee of its delivery contractor signed a certified mail return receipt card evidencing receipt. 43 CFR 1810.2; see Martha P. Merrill, 44 IBLA 136, 138 (1979). If appellant had been a successful drawee under the simultaneous oil and gas leasing system, the asserted lack of receipt would be of no consequence because the rights of third parties would have intervened. See Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1978).

Herein, however, appellant's offers were filed over-the-counter. In addition, we have no reason to question appellant's recitation of the facts. Therefore, we find that appellant's failure to execute the stipulations is a defect which may be cured. See Horn Silver Mines Co., Inc., 60 IBLA 107 (1981); Trans-Texas Energy Inc., 56 IBLA 295 (1981); see also North Central Oil Corp., 62 IBLA 38 (1982). If such a defect is remedied prior to the filing of any junior offers for the lands in question, appellant's offers may be considered with priority as of the time the signed stipulations are received by BLM. See Horn Silver Mines Co., Inc., supra; Century Oil & Gas Corp., 58 IBLA 227 (1981).

Thus, while BLM properly rejected appellant's offer because of the failure to submit executed stipulations, under the circumstances of this case appellant should again be afforded the opportunity to execute the required stipulations. Appellant's priority will be established as of the time of their filing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside, and the case is remanded for action consistent with this decision.

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Bruce R. Harris
Administrative Judge

We concur:

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Bernard V. Parrette
Chief Administrative Judge

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Edward W. Stuebing
Administrative Judge